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EXAMINER

ARYANPOUR, MITRA

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 02/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

# Office Action Summary

Application No.  
09/582,556

Applicant(s)  
Jan Abraham Van Asselt

Examiner  
Mitra Aryanpour

Art Unit  
3711



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Feb 19, 2002

2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-26 is/are pending in the application

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-26 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☒ All b) ☐ Some\* c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_

3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, 6-12, 16-20, 22, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Janis (4,138,107)** in view of **Scher et al (5,713,805)** or in the alternative **Ring (5,460,364)**.

Janis shows an apparatus for use in playing and practicing ball games comprising upper and lower guide ways (10 and 12), reciprocating means (14) connected to and freely moveable along said upper and lower guide ways (10 and 12), and a ball (16) connected to the reciprocating means (14; also see figure 1); the upper and lower guide ways are substantially parallel, and lie in a plane which is generally normal to the ground (see figure 1).

Janis does not show the reciprocating means to be substantially inelastic. Scher et al shows a baseball practice device wherein the reciprocating means can be either made of elastic or non-elastic material (see claims 10 and 11). Ring also shows a ball batting practice apparatus, wherein the reciprocating means (30) can be fabricated from elastic (for weak hitters or younger players) or non-elastic (for strong hitters) materials (column 4, lines 4-11).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the elastic reciprocating means of Janis with a substantially inelastic reciprocating means as it is claimed by Scher et al and described by Ring in order to accommodate and meet the strength of various players.

Janis further shows the upper and/or lower guide ways ( 10 and 12) are attached to a stable support (column 2, lines 32-34); the stable support is preferably a ceiling; the lower guide way (12) is adjustably engaged with the ground (column 2, line 34); the reciprocating means (14) can be made of one continuous line (figure 5) or a combination of two separate lines (figure 2) connected to the ball; the reciprocating means is connected to the upper and lower guide ways means through a slide (see figures 3 and 7), wherein the slide comprises a hook (column 3, lines 10-11).

Janis further shows the upper and lower guide ways are made of a substantially rigid material (column 1, lines 52-58), wherein the guide ways form a track and are capable of receiving a runner (see figures 1-7). However, Janis does not indicate whether or not the guide ways are made of plastic. To use a well known rigid material such as plastic is considered to be an obvious material choice.

3. Claims 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art, as applied to claims 1 and 20 and further in view of **Lingbeek (3,630,521)**.

Janis does not disclose if the upper and lower guide ways are made of low friction material.

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Lingbeek shows a practice device, wherein the upper and lower guide ways are made of low friction material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a low friction guide for the device of Janis as shown by Lingbeek, so that the ball assembly can slide more efficiently on the guides.

4. Claims 2, 5, 14, 15, 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art, as applied to claims 1 and 20 and further in view of **Albert (3,086,775)**.

Janis does not show the upper guide way to be inclined. However, applicant has demonstrated no criticality as to why the upper guide way is inclined.

Albert shows a practice device, wherein the rate of approach of the ball (25) to the player can be adjusted by varying the slope in the line (8).

One of ordinary skill in the art at the time the invention was made would have secured the upper guide way of Janis in any suitable way including at an angle as shown by Albert in order to increase the rate of approach of the ball.

Janis further shows the maximum height of the upper guide way above ground level being greater than the length of the reciprocating means (column 3, lines 18-24).

Janis does not disclose if the upper and lower guide ways are made of plastics covered cord or wire.

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Albert shows further shows the practice device wherein the upper guide way is made of a plastic covered line (column 1, lines 62-66); and the reciprocating means (23) is also partially covered by a plastic sleeve (30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a plastic cover for the device of Janis such as the one described by Albert in order to protect the guide and/or reciprocating means from damage due to repetitive use.

#### ***Response to Arguments***

5. Applicant's arguments filed February 19, 2002 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the apparatus of Scher et al and Ring are substantially different from the present invention. The Scher et al and Ring references were merely used to demonstrate that elastic, semi-elastic and non-elastic cords are old and conventional, not to make comparison in the structure of the prior art apparatus with the present invention

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In response to applicant's argument that Scher et al, Ring and Albert are non-analogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Scher et al and Ring references were used to demonstrate that elastic and non-elastic cords are well known in the art, and the Albert reference was used to demonstrate that inclined tracks are also old and conventional. To substitute the elastic cord of Janis to be non-elastic would be an obvious modification since as taught by Ring it would allow players with different skill levels to practice their strokes.

Regarding the use of Albert it would have further been obvious to modify Janis to include an inclined track, since Janis shows the tracks to be mounted on to floor and ceiling of a room. Clearly if the room has a vaulted or a cathedral ceiling the top track would be at an inclined angle to the floor which would present the ball at various heights to the player.

Regarding the apparatus of Janis not providing a controlled horizontal trajectory of the ball, Applicant's attention is drawn to figure 1, reference # 26, 28 and 30, which indicate horizontal movement of the ball (column 2, lines 46-54).

### ***Conclusion***

**6. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is (703) 308-3550. The examiner can normally be reached on Monday through Friday from 8:30 am to 5:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell, can be reached at (703) 308-2126. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Paul T. Sewell  
Supervisory Patent Examiner  
Group 3700

MA

February 27, 2002